



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

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SEASONAL EMPLOYMENT CERTIFICATION

Employers are exempt from Unemployment Insurance (UI) charges for employees who worked in a certified seasonal position provided that the employer meets all conditions and criteria included in this guidance letter.

Per 430 CMR §12.04(1), certified seasonal status can be granted by the Department of Unemployment Assistance (DUA) if the position falls into one of two categories:

1. The entire business will be in operation for less than 20 weeks in a calendar year, or
2. The employer has a functionally distinct occupation within the business that is seasonal, because the assigned duties or activities as a whole are identifiably distinct, and such duties or activities will be performed during a period of less than 20 weeks in a calendar year, due to the climate or the nature of the product or services.

An employer seeking certified seasonal status must annually submit a written application to DUA at least 60 days prior to the beginning of the season. The applications can be found at <http://www.mass.gov/lwd/docs/dua/business/1872.pdf>. Employers may be required to submit additional information in order for DUA to make a determination. Applications submitted less than 60 days from the beginning date of the season will be denied.

DUA must make a separate determination for each distinct seasonal period and each functionally distinct occupation within that seasonal period. If seasonal certification is denied, the employer has the right to appeal the determination within 10 days of the mail date.

If an employer receives seasonal certification for an occupation, it must do the following to maintain the exemption:

- Display the notice of seasonal status, as well as the determination, which lists the certified seasonal occupations. Such notices must be placed in multiple areas for inspection by the affected employees, using the forms provided by DUA.

- Notify all seasonal employees in writing, prior to their hire or immediately following the seasonal determination that:
 - The services are being performed in a certified seasonal occupation;
 - The exempt employment is limited to the dates of certification as approved by DUA; and
 - If a claim for unemployment benefits is filed and denied, or the amount of benefits is reduced because of a seasonal determination, the affected employee may appeal his or her designation as a seasonal employee.
- Return all Requests for Wage and Separation Information (Form 1062) within 10 days of the mail date and indicate that the wages paid were based on certified seasonal employment. Additionally, enclose the seasonal determination, as well as the completed Notice to Employee (Form 1876), stating the distinctly different occupation and the dates of certification.

Employers may modify applications to extend their season beyond the time frame originally requested, as long as the season remains less than 20 weeks. Modified applications must be submitted to the DUA prior to the expiration of the original certified time period. If the seasonal employment equals or exceeds 20 weeks in a calendar year, the employer must notify DUA within five days after completion of the 20th week of employment. In this case, seasonal status would no longer apply, and DUA must issue a redetermination to revoke the certified seasonal status.

If an employer transfers employees from seasonal to non-seasonal work or vice versa, the following criteria must apply to be covered under the seasonal certification, otherwise a claimant's UI benefits would be based on all wages paid by the employer:

- There must be a break in service between the seasonal and non-seasonal work;
- The additional work cannot continue in, be part of, or connected to the seasonal operation; and
- There is no intent to improperly avoid UI liability.

Please Note: If during the certified seasonal period, work becomes unavailable to an employee, the seasonal wages will be used to establish eligibility for UI benefits, and the employer may be charged. In addition, seasonal certification does not relieve an employer from filing quarterly wage and employment detail. Contributory employers are obligated to pay quarterly contributions on certified seasonal wages.